

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:07cv354**

| | | |
|--|---|---------------------|
| RITA K. STURGEON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| Vs. |) | <u>ORDER</u> |
| |) | |
| MICHAEL J. ASTRUE, Commissioner |) | |
| of Social Security, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

THIS MATTER is before the court upon the Commissioner's Motion for Remand Pursuant to Sentence Six of 42 U.S.C. § 405(g) (#16). Review of the Commissioner's motion and the pleadings reveals that good cause has been shown and that counsel for plaintiff consents to the relief sought. See Melkonyan v. Sullivan, 501 U.S. 89, 101 n.2 (1991); Shalala v. Schaefer, 113 S.Ct. 2625, 2629 n.2. (1993). Remand is necessary because plaintiff has new evidence that is neither contained in the administrative record nor cumulative of the evidence contained in such record. Such new evidence also appears to be material in that a finding was made by the Commissioner on such evidence in a petition filed subsequent to the final decision in this case that is favorable to plaintiff, and such evidence could reasonably change the Commissioner's final decision in this matter. Upon receipt of this Order, the Appeals Council will remand this case to the Administrative Law Judge for incorporation of such evidence into the record, develop the record as needed, and issue a new decision.

ORDER

IT IS, THEREFORE, ORDERED that

- (1) the consent Motion for Remand Pursuant to Sentence Six (#16) is **GRANTED**;
- (2) pursuant to sentence six of 42 U.S.C. § 405(g), this case is **REMANDED** to the Commissioner and the Appeals Council shall take the following actions:
 - (a) affirm the allowance of plaintiff's subsequent SSI application;
 - (b) remand the instant action to an ALJ for a new hearing to consider new evidence; and
 - (c) instruct the ALJ to consider evidence from any physician's assistant in light of SSR 06-03p and clarify how he evaluates such evidence.
- (3) the honorable Clerk of this Court is respectfully advised that in accordance with Sentence Six, no judgment shall be entered in this matter at this time inasmuch as the court retains jurisdiction on remand; however, the Clerk of this court is **GRANTED** leave to "administratively close" this matter if he deems appropriate to the proper administration of the court's docket.

Signed: August 19, 2008

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

